

A bill for an act

relating to commerce; regulating debt management and debt settlement services; amending Minnesota Statutes 2008, sections 45.011, subdivision 1; 46.04, subdivision 1; 46.05; 46.131, subdivision 2; 325E.311, subdivision 6; 332A.02, subdivisions 5, 8, 9, 10, 13, by adding subdivisions; 332A.04, subdivision 6; 332A.08; 332A.10; 332A.11, subdivision 2; 332A.14; proposing coding for new law as Minnesota Statutes, chapter 332B.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 45.011, subdivision 1, is amended to read:

Subdivision 1. **Scope.** As used in chapters 45 to 83, 155A, 332, 332A, 332B, 345, and 359, and sections 325D.30 to 325D.42, 326B.802 to 326B.885, and 386.61 to 386.78, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Sec. 2. Minnesota Statutes 2008, section 46.04, subdivision 1, is amended to read:

Subdivision 1. **General.** The commissioner of commerce, referred to in chapters 46 to 59A, ~~and chapter 332A~~, and 332B as the commissioner, is vested with all the powers, authority, and privileges which, prior to the enactment of Laws 1909, chapter 201, were conferred by law upon the public examiner, and shall take over all duties in relation to state banks, savings banks, trust companies, savings associations, and other financial institutions within the state which, prior to the enactment of chapter 201, were imposed upon the public examiner. The commissioner of commerce shall exercise a constant supervision, either personally or through the examiners herein provided for, over the books and affairs of all state banks, savings banks, trust companies, savings associations, credit unions, industrial loan and thrift companies, and other financial institutions doing

business within this state; and shall, through examiners, examine each financial institution at least once every 24 calendar months. In satisfying this examination requirement, the commissioner may accept reports of examination prepared by a federal agency having comparable supervisory powers and examination procedures. With the exception of industrial loan and thrift companies which do not have deposit liabilities and licensed regulated lenders, it shall be the principal purpose of these examinations to inspect and verify the assets and liabilities of each and so far investigate the character and value of the assets of each institution as to determine with reasonable certainty that the values are correctly carried on its books. Assets and liabilities shall be verified in accordance with methods of procedure which the commissioner may determine to be adequate to carry out the intentions of this section. It shall be the further purpose of these examinations to assess the adequacy of capital protection and the capacity of the institution to meet usual and reasonably anticipated deposit withdrawals and other cash commitments without resorting to excessive borrowing or sale of assets at a significant loss, and to investigate each institution's compliance with applicable laws and rules. Based on the examination findings, the commissioner shall make a determination as to whether the institution is being operated in a safe and sound manner. None of the above provisions limits the commissioner in making additional examinations as deemed necessary or advisable. The commissioner shall investigate the methods of operation and conduct of these institutions and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. The commissioner may make requirements as to records as deemed necessary to facilitate the carrying out of the commissioner's duties and to properly protect the public interest. The commissioner may examine, or cause to be examined by these examiners, on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any financial institution touching the affairs and business thereof, and may issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued under the commissioner's direction, the refusal may at once be reported to the district court of the district in which the bank or other financial institution is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to official duties, the commissioner of commerce has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, savings associations, and other financial institutions within the state, and all persons having dealings with or knowledge of the affairs or methods of these

institutions, shall afford reasonable facilities for these examinations, make returns and reports to the commissioner of commerce as the commissioner may require; attend and answer, under oath, the commissioner's lawful inquiries; produce and exhibit any books, accounts, documents, and property as the commissioner may desire to inspect, and in all things aid the commissioner in the performance of duties.

Sec. 3. Minnesota Statutes 2008, section 46.05, is amended to read:

**46.05 SUPERVISION OVER FINANCIAL INSTITUTIONS.**

Every state bank, savings bank, trust company, savings association, debt management services provider, debt settlement services provider, and other financial institutions shall be at all times under the supervision and subject to the control of the commissioner of commerce. If, and whenever in the performance of duties, the commissioner finds it necessary to make a special investigation of any financial institution under the commissioner's supervision, and other than a complete examination, the commissioner shall make a charge therefor to include only the necessary costs thereof. Such a fee shall be payable to the commissioner on the commissioner's making a request for payment.

Sec. 4. Minnesota Statutes 2008, section 46.131, subdivision 2, is amended to read:

Subd. 2. **Assessment authority.** Each bank, trust company, savings bank, savings association, regulated lender, industrial loan and thrift company, credit union, motor vehicle sales finance company, debt management services provider, debt settlement services provider, and insurance premium finance company organized under the laws of this state or required to be administered by the commissioner of commerce shall pay into the state treasury its proportionate share of the cost of maintaining the Department of Commerce.

Sec. 5. Minnesota Statutes 2008, section 325E.311, subdivision 6, is amended to read:

Subd. 6. **Telephone solicitation.** "Telephone solicitation" means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device as defined in section 325E.26, subdivision 2, or by other means. Telephone solicitation does not include communications:

(1) to any residential subscriber with that subscriber's prior express invitation or permission; or

(2) by or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship.

Telephone solicitation also does not include communications if the caller is identified by a caller identification service and the call is:

(i) by or on behalf of an organization that is identified as a nonprofit organization under state or federal law, unless the organization is a debt management services provider defined in section 332A.02 or a debt settlement services provider defined in section 332B.02;

(ii) by a person soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the solicitor who makes the call and the prospective purchaser; or

(iii) by a political party as defined under section 200.02, subdivision 6.

Sec. 6. Minnesota Statutes 2008, section 332A.02, is amended by adding a subdivision to read:

Subd. 2a. **Advertise.** "Advertise" means to solicit business through any means or medium.

Sec. 7. Minnesota Statutes 2008, section 332A.02, subdivision 5, is amended to read:

Subd. 5. **Controlling or affiliated party.** "Controlling or affiliated party" means any person or entity that controls or is controlled, directly or indirectly ~~controlling,~~ ~~controlled by,~~ or is under common control with another person. Controlling or affiliated party includes, but is not limited to, employees, officers, independent contractors, corporations, partnerships, and limited liability corporations.

Sec. 8. Minnesota Statutes 2008, section 332A.02, is amended by adding a subdivision to read:

Subd. 5a. **Creditor.** "Creditor" means any party:

(1) named by the debtor as a creditor in the debt management services plan or debt management services agreement;

(2) that acquires or holds the debt; or

(3) to whom interactions with the debt management services is assigned in relation to the debt listed in the debt management services plan or debt management services agreement.

Sec. 9. Minnesota Statutes 2008, section 332A.02, subdivision 8, is amended to read:

Subd. 8. **Debt management services provider.** "Debt management services provider" means any person offering or providing debt management services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. This term includes any person to whom duties under a debt management services agreement or debt management services plan are delegated, and does not include services performed by the following when engaged in the regular course of their respective businesses and professions:

(1) attorneys at law, escrow agents, accountants, broker-dealers in securities;

(2) state or national banks, credit unions, trust companies, savings associations, title insurance companies, insurance companies, and all other lending institutions duly authorized to transact business in Minnesota, ~~provided no fee is charged for the service;~~

(3) persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt management, perform credit services for their employer;

(4) public officers acting in their official capacities and persons acting as a debt management services provider pursuant to court order;

(5) any person while performing services incidental to the dissolution, winding up, or liquidation of a partnership, corporation, or other business enterprise;

(6) the state, its political subdivisions, public agencies, and their employees;

(7) ~~credit unions and collection agencies, provided no fee is charged for the service~~ that the services are provided to a creditor;

(8) "qualified organizations" designated as representative payees for purposes of the Social Security and Supplemental Security Income Representative Payee System and the federal Omnibus Budget Reconciliation Act of 1990, Public Law 101-508;

(9) accelerated mortgage payment providers. "Accelerated mortgage payment providers" are persons who, after satisfying the requirements of sections 332.30 to 332.303, receive funds to make mortgage payments to a lender or lenders, on behalf of mortgagors, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness. The term does not include: (i) persons or entities described in clauses (1) to (8); (ii) mortgage lenders or servicers, industrial loan and thrift companies, or regulated lenders under chapter 56; or (iii) persons authorized to make loans under section 47.20, subdivision 1. For purposes of this clause and sections 332.30 to 332.303, "lender" means the original lender or that lender's assignee, whichever is the current mortgage holder;

(10) trustees, guardians, and conservators; and

6.1 (11) debt settlement services providers.

6.2 Sec. 10. Minnesota Statutes 2008, section 332A.02, subdivision 9, is amended to read:

6.3 Subd. 9. **Debt management services.** "Debt management services" means the  
6.4 provision of any ~~one or more of the following services in connection with debt incurred~~  
6.5 ~~primarily for personal, family, or household services:~~

6.6 ~~(1) managing the financial affairs of an individual by distributing income or money~~  
6.7 ~~to the individual's creditors;~~

6.8 ~~(2) receiving funds for the purpose of distributing the funds among creditors in~~  
6.9 ~~payment or partial payment of obligations of a debtor; or~~

6.10 ~~(3) adjusting, prorating, pooling, or liquidating the indebtedness of a debtor whereby~~  
6.11 a debt management services provider assists in managing the financial affairs of a debtor  
6.12 by distributing periodic payments to the debtor's creditors from funds that the debt  
6.13 management services provider receives from the debtor and where the primary purpose  
6.14 of the services is to effect repayment of debt incurred primarily for personal, family, or  
6.15 household services.

6.16 Any person so engaged or holding out as so engaged is deemed to be engaged in the  
6.17 provision of debt management services regardless of whether or not a fee is charged for  
6.18 such services.

6.19 Sec. 11. Minnesota Statutes 2008, section 332A.02, subdivision 10, is amended to read:

6.20 Subd. 10. **Debtor.** "Debtor" means the person for whom the debt ~~prorating service~~  
6.21 ~~is~~ management services are performed.

6.22 Sec. 12. Minnesota Statutes 2008, section 332A.02, subdivision 13, is amended to read:

6.23 Subd. 13. **Debt settlement services provider.** "Debt settlement services provider"  
6.24 ~~means any person engaging in or holding out as engaging in the business of negotiating,~~  
6.25 ~~adjusting, or settling debt incurred primarily for personal, family, or household purposes~~  
6.26 ~~without holding or receiving the debtor's funds or personal property and without paying~~  
6.27 ~~the debtor's funds to, or distributing the debtor's property among, creditors~~ has the  
6.28 meaning given in section 332B.02, subdivision 11. The term shall not include persons  
6.29 ~~listed in subdivision 8, clauses (1) to (10).~~

6.30 Sec. 13. Minnesota Statutes 2008, section 332A.04, subdivision 6, is amended to read:

6.31 Subd. 6. **Right of action on bond.** If the registrant has failed to account to a debtor  
6.32 or distribute to the debtor's creditors the amounts required by this chapter ~~and, or has~~

failed to perform any of the services promised in the debt management services agreement between the debtor and registrant, the registrant is in default. The debtor or the debtor's legal representative or receiver, the commissioner, or the attorney general, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given under this section, for loss suffered by the debtor, not exceeding the face amount of the bond or security, and without the necessity of joining the registrant in the suit or action based on the default.

Sec. 14. Minnesota Statutes 2008, section 332A.08, is amended to read:

**332A.08 DENIAL OF REGISTRATION.**

The commissioner, with notice to the applicant by certified mail sent to the address listed on the application, may deny an application for a registration upon finding that the applicant:

(1) has submitted an application required under section 332A.04 that contains incorrect, misleading, incomplete, or materially untrue information. An application is incomplete if it does not include all the information required in section 332A.04;

(2) has failed to pay any fee or pay or maintain any bond required by this chapter, or failed to comply with any order, decision, or finding of the commissioner made under and within the authority of this chapter;

(3) has violated any provision of this chapter or any rule or direction lawfully made by the commissioner under and within the authority of this chapter;

(4) or any controlling or affiliated party has ever been convicted of a crime or found civilly liable for an offense involving moral turpitude, including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or violation, or any violation of a federal or state law or regulation in connection with activities relating to the rendition of debt management services or any consumer fraud, false advertising, deceptive trade practices, or similar consumer protection law;

(5) has had a registration or license previously revoked or suspended in this state or any other state or the applicant or licensee has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the debt management services provider business; or any controlling or affiliated party has been an officer, director, manager, or shareholder owning more than a ten percent interest in a debt management services provider whose registration has previously been revoked or suspended in this state or any other state, or who has been permanently or temporarily enjoined by any court of competent jurisdiction

from engaging in or continuing any conduct or practice involving any aspect of the debt management services provider business;

(6) has made any false statement or representation to the commissioner;

(7) is insolvent;

(8) refuses to fully comply with an investigation or examination of the debt management services provider by the commissioner;

(9) has improperly withheld, misappropriated, or converted any money or properties received in the course of doing business;

(10) has failed to have a trust account with an actual cash balance equal to or greater than the sum of the escrow balances of each debtor's account;

(11) has defaulted in making payments to creditors on behalf of debtors as required by agreements between the provider and debtor; ~~or~~

(12) has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere; or

(13) has been shown to have engaged in a pattern of failing to perform the services promised.

Sec. 15. Minnesota Statutes 2008, section 332A.10, is amended to read:

**332A.10 WRITTEN DEBT MANAGEMENT SERVICES AGREEMENT.**

Subdivision 1. **Written agreement required.** (a) A debt management services provider may not perform any debt management services or receive any money related to a debt management services plan until the provider has obtained a debt management services agreement that contains all terms of the agreement between the debt management services provider and the debtor.

(b) A debt management services agreement must:

(1) be in writing, dated, and signed by the debt management services provider and the debtor;

(2) conspicuously indicate whether or not the debt management services provider is registered with the Minnesota Department of Commerce and include any registration number; and

(3) be written in the debtor's primary language if the debt management services provider advertised in that language.

(c) The registrant must furnish the debtor with a copy of the signed contract upon execution.



Subd. 2. **Actions prior to written agreement.** No person may provide debt management services for a debtor or execute a debt management services agreement unless the person first has:

(1) provided the debtor individualized counseling and educational information that, at a minimum, addresses managing household finances, managing credit and debt, budgeting, and personal savings strategies;

(2) prepared in writing and provided to the debtor, in a form that the debtor may keep, an individualized financial analysis and a proposed debt management services plan listing the debtor's known debts with specific recommendations regarding actions the debtor should take to reduce or eliminate the amount of the debts, including written disclosure that debt management services are not suitable for all debtors and that there are other ways, including bankruptcy, to deal with indebtedness;

(3) made a determination supported by an individualized financial analysis that the debtor can reasonably meet the requirements of the proposed debt management services plan and that there is a net tangible benefit to the debtor of entering into the proposed debt management services plan; ~~and~~

(4) prepared, in a form the debtor may keep, a written list identifying all known creditors of the debtor that the provider reasonably expects to participate in the plan and the creditors, including secured creditors, that the provider reasonably expects not to participate; and

(5) disclosed, in addition to the written disclosure on the agreement required under subdivision 1, whether or not the debt management services provider is registered with the Minnesota Department of Commerce and any registration number.

Subd. 3. **Required ~~terms~~ provisions.** (a) Each debt management services agreement must contain the following ~~terms~~ provisions, which must be disclosed prominently and clearly in bold print on the front page of the agreement, segregated by bold lines from all other information on the page:

(1) the origination fee amount to be paid by the debtor and whether all or a portion of the ~~initial origination~~ fee ~~amount~~ is refundable or nonrefundable;

(2) the monthly fee amount or percentage to be paid by the debtor; and

(3) the total amount of fees reasonably anticipated to be paid by the debtor over the term of the agreement.

(b) Each debt management services agreement must also contain the following:

(1) a disclosure that if the amount of debt owed is increased by interest, late fees, over the limit fees, and other amounts imposed by the creditors, the length of the debt management services agreement will be extended and remain in force and that the total

10.1 dollar charges agreed upon may increase at the rate agreed upon in the original contract  
10.2 agreement;

10.3 (2) a prominent statement describing the terms upon which the debtor may cancel  
10.4 the contract as set forth in section 332A.11;

10.5 (3) a detailed description of all services to be performed by the debt management  
10.6 services provider for the debtor;

10.7 (4) the debt management services provider's refund policy; and

10.8 (5) the debt management services provider's principal business address and the name  
10.9 and address of its agent in this state authorized to receive service of process.

10.10 Subd. 4. **Prohibited terms.** The following terms shall not be included in the debt  
10.11 management services agreement:

10.12 (1) a hold harmless clause;

10.13 (2) a confession of judgment, or a power of attorney to confess judgment against the  
10.14 debtor or appear as the debtor in any judicial proceeding;

10.15 (3) a waiver of the right to a jury trial, if applicable, in any action brought by  
10.16 or against a debtor;

10.17 (4) an assignment of or an order for payment of wages or other compensation for  
10.18 services;

10.19 (5) a provision in which the debtor agrees not to assert any claim or defense arising  
10.20 out of the debt management services agreement;

10.21 (6) a waiver of any provision of this chapter or a release of any obligation required  
10.22 to be performed on the part of the debt management services provider; or

10.23 (7) a mandatory arbitration or choice of law clause.

10.24 Subd. 5. **New debt management services agreements; modification of existing**  
10.25 **agreements.** (a) Separate and additional debt management services agreements that  
10.26 comply with this chapter may be entered into by the debt management services provider  
10.27 and the debtor provided that no additional ~~initial~~ origination fee may be charged by the  
10.28 debt management services provider.

10.29 (b) Any modification of an existing debt management services agreement, including  
10.30 any increase in the number or amount of debts included in the debt management ~~service~~  
10.31 services agreement, must be in writing and signed by both parties, except that the signature  
10.32 of the debtor is not required if:

10.33 (1) a creditor is added to or deleted from a debt management services agreement  
10.34 at the request of the debtor or a debtor voluntarily increases the amount of a payment,  
10.35 provided the debt management services provider must provide an updated payment  
10.36 schedule to the debtor within seven days; or

(2) the payment amount to a creditor in the agreement increases by \$10 or less and the total payment amount to all creditors increases a total of \$20 or less as a result of incorrect or incomplete information provided by the debtor regarding the amount of debt owed a creditor, provided the debt management services provider must notify the debtor of the increase within seven days.

No fees, charges, or other consideration may be demanded from the debtor for the modification, other than an increase in the amount of the monthly maintenance fee established in the original debt management services agreement.

Sec. 16. Minnesota Statutes 2008, section 332A.11, subdivision 2, is amended to read:

Subd. 2. **Notice of debtor's right to cancel.** A debt management services agreement must contain, on its face, in an easily readable typeface type immediately adjacent to the space for signature by the debtor, the following notice: "Right To Cancel: You have the right to cancel this contract at any time on ten days' written notice."

Sec. 17. Minnesota Statutes 2008, section 332A.14, is amended to read:

**332A.14 PROHIBITIONS.**

~~A registrant~~ (a) No debt management services provider shall not:

(1) purchase from a creditor any obligation of a debtor;

(2) use, threaten to use, seek to have used, or seek to have threatened the use of any legal process, including but not limited to garnishment and repossession of personal property, against any debtor while the debt management services agreement between the registrant and the debtor remains executory;

(3) advise, counsel, or encourage a debtor to stop paying a creditor until a debt management services plan is in place, or imply, infer, encourage, or in any other way indicate, that it is advisable to stop paying a creditor;

(4) sanction or condone the act by a debtor of ceasing payments or imply, infer, or in any manner indicate that the act of ceasing payments is advisable or beneficial to the debtor;

~~(4)~~ (5) require as a condition of performing debt management services the purchase of any services, stock, insurance, commodity, or other property or any interest therein either by the debtor or the registrant;

~~(5)~~ (6) compromise any debts unless the prior written approval of the debtor has been obtained to such compromise and unless such compromise inures solely to the benefit of the debtor;

12.1 ~~(6)~~ (7) receive from any debtor as security or in payment of any fee a promissory  
12.2 note or other promise to pay or any mortgage or other security, whether as to real or  
12.3 personal property;

12.4 ~~(7)~~ (8) lend money or provide credit to any debtor if any interest or fee is charged,  
12.5 or directly or indirectly collect any fee for referring, advising, procuring, arranging, or  
12.6 assisting a consumer in obtaining any extension of credit or other debtor service from a  
12.7 lender or debt management services provider;

12.8 ~~(8)~~ (9) structure a debt management services agreement that would result in negative  
12.9 amortization of any debt in the plan;

12.10 ~~(9)~~ (10) engage in any unfair, deceptive, or unconscionable act or practice in  
12.11 connection with any service provided to any debtor;

12.12 ~~(10)~~ (11) offer, pay, or give any material cash fee, gift, bonus, premium, reward, or  
12.13 other compensation to any person for referring any prospective customer to the registrant  
12.14 or for enrolling a debtor in a debt management services plan, or provide any other  
12.15 incentives for employees or agents of the debt management services provider to induce  
12.16 debtors to enter into a debt management services plan;

12.17 ~~(11)~~ (12) receive any cash, fee, gift, bonus, premium, reward, or other compensation  
12.18 from any person other than the debtor or a person on the debtor's behalf in connection  
12.19 with activities as a registrant, provided that this paragraph does not apply to a registrant  
12.20 which is a bona fide nonprofit corporation duly organized under chapter 317A or under  
12.21 the similar laws of another state;

12.22 ~~(12)~~ (13) enter into a contract with a debtor unless a thorough written budget analysis  
12.23 indicates that the debtor can reasonably meet the requirements of the financial adjustment  
12.24 plan and will be benefited by the plan;

12.25 ~~(13)~~ (14) in any way charge or purport to charge or provide any debtor credit  
12.26 insurance in conjunction with any contract or agreement involved in the debt management  
12.27 services plan;

12.28 ~~(14)~~ (15) operate or employ a person who is an employee or owner of a collection  
12.29 agency or process-serving business; or

12.30 ~~(15)~~ (16) solicit, demand, collect, require, or attempt to require payment of a sum  
12.31 that the registrant states, discloses, or advertises to be a voluntary contribution to a debt  
12.32 management services provider or designee from the debtor.

12.33 Sec. 18. **[332B.02] DEFINITIONS.**

Subdivision 1. **Scope.** Unless a different meaning is clearly indicated by the context, for the purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Advertise.** "Advertise" means to solicit business through any means or medium.

Subd. 3. **Aggregate debt.** "Aggregate debt" means the total of principal and interest that is owed by the debtor to the creditors at the time of execution of the debt settlement agreement.

Subd. 4. **Attorney general.** "Attorney general" means the attorney general of the state of Minnesota.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 6. **Controlling or affiliated party.** "Controlling or affiliated party" means any person or entity that controls or is controlled, directly or indirectly, or is under common control with another person. Controlling or affiliated party includes, but is not limited to, employees, officers, independent contractors, corporations, partnerships, and limited liability corporations.

Subd. 7. **Creditor.** "Creditor" means any party:

(1) named by the debtor as a creditor in the debt settlement services plan or debt settlement services agreement;

(2) that acquires or holds the debt; or

(3) to whom interactions with the debt settlement services is assigned in relation to the debt listed in the debt settlement services plan or debt settlement services agreement.

Subd. 8. **Debt settlement services.** "Debt settlement services" means any one or more of the following activities:

(1) offering to provide advice, or offering to act or acting as an intermediary between a debtor and one or more of the debtor's creditors, where the primary purpose of the advice or action is to obtain a settlement for less than the full amount of debt, whether in principal, interest, fees, or other charges, incurred primarily for personal, family, or household purposes including, but not limited to, offering debt negotiation, debt reduction, or debt relief services; or

(2) advising, encouraging, assisting, or counseling a debtor to accumulate funds in an account for future payment of a reduced amount of debt to one or more of the debtor's creditors.

Any person so engaged or holding out as so engaged is deemed to be engaged in the provision of debt settlement services, regardless of whether or not a fee is charged for such services.

Subd. 9. **Debt settlement services agreement.** "Debt settlement services agreement" means the written contract between the debt settlement services provider and the debtor.

Subd. 10. **Debt settlement services plan.** "Debt settlement services plan" means the debtor's individualized package of debt settlement services set forth in the debt settlement services agreement.

Subd. 11. **Debt settlement services provider.** "Debt settlement services provider" means any person offering or providing debt settlement services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. The term includes any person to whom duties under a debt management agreement or debt management plan are delegated, a lead generator, or any other person acting as an intermediary or referral agent between a debtor and an entity actually providing debt settlement services. The term shall not include persons listed in section 332A.02, subdivision 8, clauses (1) to (10).

Subd. 12. **Lead generator.** "Lead generator" means a person that solicits debtors to engage in debt settlement through mail, in-person, or electronic Web site-based solicitation or any other means.

Subd. 13. **Person.** "Person" means an individual, firm, partnership, association, or corporation.

Subd. 14. **Registrant.** "Registrant" means any person registered by the commissioner pursuant to this chapter and, where used in conjunction with an act or omission required or prohibited by this chapter, shall mean any person performing debt settlement services.

Sec. 19. **[332B.03] REQUIREMENT OF REGISTRATION.**

On or after August 1, 2009, it is unlawful for any person, whether or not located in this state, to operate as a debt settlement services provider or provide debt settlement services including, but not limited to, offering, advertising, or executing or causing to be executed any debt settlement services or debt settlement services agreement, except as authorized by law, without first becoming registered as provided in this chapter. Debt settlement services providers may continue to provide debt settlement services without complying with this chapter to those debtors who entered into a contract to participate in a debt settlement services plan prior to August 1, 2009, but may not enter into a debt settlement services agreement with a debt on or after August 1, 2009, without complying with this chapter.

Sec. 20. [332B.04] REGISTRATION.

Subdivision 1. Form. Application for registration to operate as a debt settlement services provider in this state must be made in writing to the commissioner, under oath, in the form prescribed by the commissioner, and must contain:

(1) the full name of each principal of the entity applying;

(2) the address, which must not be a post office box, and the telephone number and, if applicable, the e-mail address, of the applicant;

(3) consent to the jurisdiction of the courts of this state;

(4) the name and address of the registered agent authorized to accept service of process on behalf of the applicant or appointment of the commissioner as the applicant's agent for purposes of accepting service of process;

(5) disclosure of:

(i) whether any controlling or affiliated party has ever been convicted of a crime or found civilly liable for an offense involving moral turpitude, including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or violation, or any violation of a federal or state law or regulation in connection with activities relating to the rendition of debt settlement services or involving any consumer fraud, false advertising, deceptive trade practices, or similar consumer protection law;

(ii) any judgments, private or public litigation, tax liens, written complaints, administrative actions, or investigations by any government agency against the applicant or any officer, director, manager, or shareholder owning more than five percent interest in the applicant, unresolved or otherwise, filed or otherwise commenced within the preceding ten years;

(iii) whether the applicant or any person employed by the applicant has had a record of having defaulted in the payment of money collected for others, including the discharge of debts through bankruptcy proceedings; and

(iv) whether the applicant's license or registration to provide debt settlement services in any other state has ever been revoked or suspended;

(6) a copy of the applicant's standard debt settlement services agreement that the applicant intends to execute with debtors;

(7) proof of accreditation; and

(8) any other information and material as the commissioner may require.

The commissioner may, for good cause shown, temporarily waive any requirement of this subdivision.

Subd. 2. **Term and scope of registration.** A registration is effective until 11:59 p.m. on December 31 of the year for which the application for registration is filed or until it is surrendered by the registrant or revoked or suspended by the commissioner. The registration is limited solely to the business of providing debt settlement services.

Subd. 3. **Fees; bond.** An applicant for registration as a debt settlement services provider must comply with the requirements of section 332A.04, subdivisions 3, 4, and 5.

Subd. 4. **Right of action on bond.** If the registrant has failed to account to a debtor, or has failed to perform any of the services promised, the registrant is in default. The debtor or the debtor's legal representative or receiver, the commissioner, or the attorney general, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given under this section, for loss suffered by the debtor, not exceeding the face amount of the bond or security, and without the necessity of joining the registrant in the suit or action based on the default.

Subd. 5. **Registrant list.** The commissioner must maintain a list of registered debt settlement services providers. The list must be made available to the public in written form upon request and on the Department of Commerce Web site.

Subd. 6. **Renewal of registration.** Each year, each registrant under the provisions of this chapter must not, more than 60 nor less than 30 days before its registration is to expire, apply to the commissioner for renewal of its registration on a form prescribed by the commissioner. The application must be signed by the registrant under penalty of perjury, contain current information on all matters required in the original application, and be accompanied by a payment of \$250. The registrant must maintain a continuous surety bond that satisfies the requirements of section 332A.04, subdivision 4. The renewal is effective for one year. The commissioner may, for good cause shown, temporarily waive any requirement of this section.

Sec. 21. **[332B.05] DENIAL, SUSPENSION, REVOCATION, OR NONRENEWAL OF REGISTRATION.**

Subdivision 1. **Denial.** The commissioner, with notice to the applicant by certified mail sent to the address listed on the application, may deny an application for a registration for any of the reasons specified under section 332A.08.

Subd. 2. **Suspension, revocation, or nonrenewal.** The commissioner may suspend, revoke, or refuse to renew any registration issued under this chapter, or may levy a civil penalty under section 45.027, or any combination of actions, if the debt settlement services provider or any controlling or affiliated person has committed any act or omission for which the commissioner could have refused to issue an initial registration.



Subd. 3. **Procedure.** Suspension, revocation, or nonrenewal must be upon notice and under the conditions prescribed in section 332A.09, subdivision 1. Upon issuance of an order suspending, revoking, or refusing to renew a registration, the commissioner:

(1) shall follow the procedure established in section 332A.09, subdivision 2; and

(2) may follow the procedure specified in section 332A.09, subdivision 3, concerning the appointment of a receiver for funds of sanctioned registrants.

Sec. 22. **[332B.06] WRITTEN DEBT SETTLEMENT SERVICES AGREEMENT; DISCLOSURES; TRUST ACCOUNT.**

Subdivision 1. **Written agreement required.** (a) A debt settlement services provider may not perform, or impose any charges or receive any payment for, any debt settlement services until the provider and the debtor have executed a debt settlement services agreement that contains all terms of the agreement between the debt settlement services provider and the debtor and complies with all the applicable requirements of this chapter.

(b) A debt settlement services agreement must:

(1) be in writing, dated, and signed by the debt settlement services provider and the debtor;

(2) conspicuously indicate whether or not the debt settlement services provider is registered with the Minnesota Department of Commerce and include any registration number; and

(3) be written in the debtor's primary language if the debt settlement services provider advertises in that language.

(c) The registrant must furnish the debtor with a copy of the signed contract upon execution.

Subd. 2. **Actions prior to executing a written agreement.** No person may provide debt settlement services for a debtor or execute a debt settlement services agreement unless the person first has:

(1) provided the debtor individualized counseling that, at a minimum, addresses managing household finances, managing credit and debt, budgeting, personal savings strategies, and a detailed description of all the various ways to reduce or eliminate the debt, which must, at a minimum, include bankruptcy; and

(2) prepared in writing and provided to the debtor, in a form the debtor may keep, an individualized financial analysis of the debtor's financial circumstances, including income and liabilities, and made a determination supported by the individualized financial analysis that:

18.1           (i) the debt settlement plan proposed for addressing the debt is suitable for the  
18.2 individual debtor;

18.3           (ii) the debtor can reasonably meet the requirements of the proposed debt settlement  
18.4 services plan; and

18.5           (iii) there is a net tangible benefit to the debtor of entering into the proposed debt  
18.6 settlement services plan.

18.7           **Subd. 3. Determination concerning creditor participation.** (a) Before executing a  
18.8 debt settlement services agreement or providing any services, a debt settlement services  
18.9 provider must make a determination, supported by sufficient bases, which creditors listed  
18.10 by the debtor are reasonably likely, and which are not reasonably likely, to participate in  
18.11 the debt settlement services plan set forth in the debt settlement services agreement.

18.12           (b) A debt settlement provider must make personal or written contact with a creditor  
18.13 to determine the reasonable likelihood of participation or nonparticipation of the creditor,  
18.14 unless the debt settlement services provider:

18.15           (1) has written confirmation from the creditor that the creditor and the debt  
18.16 settlement services provider are currently engaged in negotiations to settle a debt for  
18.17 another debtor; or

18.18           (2) can produce evidence that the provider and the creditor have entered into a  
18.19 settlement of a debt within the prior six months.

18.20           (c) A debt settlement services provider has a defense against a claim that no  
18.21 sufficient basis existed to make a determination that a creditor was likely to participate if,  
18.22 at the time the determination was made, the debt settlement services provider can produce:

18.23           (1) written confirmation from the creditor that the creditor and the debt settlement  
18.24 services provider were currently engaged in negotiations to settle a debt for another  
18.25 debtor; or

18.26           (2) evidence that the provider and the creditor had entered into a settlement of a debt  
18.27 within the six months prior to the date of the determination.

18.28           (d) The debt settlement services provider must notify the debtor as soon as  
18.29 practicable after the provider has made a determination on the likelihood of participation  
18.30 or nonparticipation of all the creditors listed for inclusion in the debt settlement services  
18.31 agreement or debt settlement services plan. If not all creditors listed in the debt settlement  
18.32 services agreement are reasonably likely to participate in the debt settlement services  
18.33 plan, the debt settlement services provider must obtain the written authorization from the  
18.34 debtor to proceed with the debt settlement services agreement without the participation of  
18.35 all listed creditors.

Subd. 4. **Disclosures.** (a) A person offering to provide or providing debt settlement services must disclose both orally and in writing whether or not the person is registered with the Minnesota Department of Commerce and any registration number.

(b) No person may provide debt settlement services unless the person first has provided, both orally and in writing, on a single sheet of paper, separate from any other document or writing, the following verbatim notice:

**WARNING**

We CANNOT GUARANTEE that you will successfully reduce or eliminate your debt.

If you stop paying your creditors, there is a strong likelihood some or all of the following may happen:

- (1) YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- (2) YOU MAY STILL BE CONTACTED BY CREDITORS.
- (3) YOU MAY STILL BE SUED BY CREDITORS for the money you owe.
- (4) FEES, INTEREST, AND OTHER CHARGES WILL CONTINUE TO MOUNT UP DURING THE (INSERT NUMBER) MONTHS THIS PLAN IS IN EFFECT.

Even if we do settle your debt, YOU MAY STILL HAVE TO PAY TAXES on the amount forgiven.

Your credit rating may be adversely affected.

(c) The heading, "WARNING," must be in bold, underlined, 28-point type, and the remaining text must be in 14-point type, with a double space between each statement.

(d) The disclosure and notice required under this subdivision must be provided in the debtor's primary language if the debt settlement provider advertises in that language.

Subd. 5. **Required information.** (a) Each debt settlement services agreement must contain the following information, which must be disclosed prominently and clearly in bold print on the front page of the agreement, segregated by bold lines from all other information on the page:

(1) the origination fee amount to be paid by the debtor and whether all or part of the origination fee is refundable or nonrefundable; and

(2) the service fee formula and the total amount of service fees reasonably anticipated to be paid by the debtor over the term of the agreement.

(b) Each debt settlement services agreement must also contain the following:

(1) a prominent statement describing the terms upon which the debtor may cancel the contract as set forth in section 332B.07;

(2) a detailed description of all services to be performed by the debt settlement services provider for the debtor;

(3) the debt settlement services provider's refund policy;

(4) the debt settlement services provider's principal business address, which must not be a post office box, and the name and address of its agent in this state authorized to receive service of process; and

(5) the name of each creditor the debtor has listed and the aggregate debt owed to each creditor that will be the subject of settlement.

**Subd. 6. Prohibited terms.** A debt settlement services agreement may not contain any of the terms prohibited under section 332A.10, subdivision 4.

**Subd. 7. New debt settlement services agreements; modifications of existing agreements.** (a) Separate and additional debt settlement services agreements that comply with this chapter may be entered into by the debt settlement services provider and the debtor, provided that no additional origination fee may be charged by the debt settlement services provider.

(b) Any modification of an existing debt settlement services agreement, including any increase in the number or amount of debts included in the debt settlement services agreement, must be in writing and signed by both parties. No fee may be charged to modify an existing agreement.

**Subd. 8. Funds held in trust.** Debtor funds may be temporarily held in trust for the purpose of writing exchange checks. If the registrant temporarily holds debtor funds, the registrant must maintain a separate trust account, except that the registrant may commingle debtor funds with the registrant's own funds, in the form of an interest fund, to the extent necessary to ensure maintenance of a minimum balance, if the financial institution at which the trust account is held requires a minimum balance to avoid the assessment of fees or penalties for failure to maintain a minimum balance.

**Sec. 23. [332B.07] RIGHT TO CANCEL.**

**Subdivision 1. Debtor's right to cancel.** (a) A debtor has the right to cancel a debt settlement services agreement without cause at any time upon ten days' written notice to the debt settlement services provider.

(b) In the event of cancellation, the debt settlement services provider must, within ten days of the cancellation, notify the debtor's creditors of the cancellation and provide a refund of all funds paid by or for the debtor to the debt settlement services provider, except for the origination fee specified in section 332B.09, subdivision 1.

**Subd. 2. Notice of debtor's right to cancel.** A debt settlement services agreement must contain, on its face, in an easily readable type immediately adjacent to the space for

signature by the debtor, the following notice: "Right to Cancel: You have the right to cancel this contract at any time on ten days' written notice."

**Subd. 3. Automatic termination.** Upon the payment of all listed or settled debts and fees, the debt settlement services agreement must automatically terminate, and all unexpended funds paid by or for the debtor to the debt settlement services provider must be immediately returned to the debtor.

**Subd. 4. Debt settlement services provider's right to cancel.** (a) A debt settlement services provider may cancel a debt settlement services agreement with good cause upon 30 days' written notice to the debtor.

(b) Within ten days after the cancellation, the debt settlement services provider must:

- (1) notify the debtor's creditors of the cancellation; and
- (2) return to the debtor all funds paid by or for the debtor to the debt settlement provider, except for the origination fee specified in section 332B.09, subdivision 1.

Sec. 24. **[332B.08] BOOKS, RECORDS, AND INFORMATION.**

**Subdivision 1. Records retention; annual report.** Every registrant must keep, and use in the registrant's business, such books, accounts, and records, including electronic records, as will enable the commissioner to determine whether the registrant is complying with this chapter and the rules, orders, and directives adopted by the commissioner under this chapter. Every registrant must preserve such books, accounts, and records for at least six years after making the final entry on any transaction recorded therein. Examinations of the books, records, and method of operations conducted under the supervision of the commissioner shall be done at the cost of the registrant. The cost must be assessed as determined under section 46.131.

**Subd. 2. Annual report.** On or before March 15 of each calendar year, each registrant must file a report with the commissioner containing such information as the commissioner may require about the preceding calendar year. The report must be in a form the commissioner prescribes.

**Subd. 3. Statements to debtors.** (a) Each registrant must:

- (1) maintain and make available records and accounts that will enable each debtor to ascertain the amounts paid to the creditors of the debtor. A statement showing amounts received from the debtor, disbursements to each creditor, amounts that any creditor has agreed to as payment in full for any debt owed the creditor by the debtor, charges deducted by the registrant, and other information as the commissioner may prescribe, must be furnished by the registrant to the debtor at least monthly and, in addition, upon any cancellation or termination of the contract;

(2) include in the statement furnished to debtors a list of all activities conducted pursuant to the contract, including the number and description of communications with each creditor during the reporting period; and

(3) prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practicable.

(b) Each debtor must have reasonable access, without cost, by electronic or other means, to information in the registrant's files applicable to the debtor. These statements, records, and accounts must otherwise remain confidential, except for duly authorized state and government officials, the commissioner, the attorney general, the debtor, and the debtor's representative and designees.

Sec. 25. **[332B.09] FEES; WITHDRAWAL OF CREDITORS.**

Subdivision 1. **Origination fee.** A debt settlement services provider may charge a nonrefundable origination fee of not more than \$500.

Subd. 2. **Monthly fee.** In addition to the origination fee under subdivision 1, a debt settlement services provider may, beginning in the fourth month after the execution of the debt settlement services agreement, charge a monthly fee of up to \$50:

(1) for the first two years that the debt settlement services agreement is in effect if the aggregate debt is \$20,000 or less; or

(2) for the first three years that the debt settlement services agreement is in effect if the aggregate debt is more than \$20,000.

Subd. 3. **Settlement fee.** (a) A debt settlement services provider may charge a settlement fee equal to ten percent of the savings actually negotiated by the debt settlement services provider. The savings shall be calculated as the difference between the aggregate debt that is stated in the debt settlement services agreement at the time of its execution and total amount that the debtor actually pays to settle all the debts stated in the debt settlement services agreement, provided that only savings resulting from concessions actually negotiated by the debt settlement services provider may be counted.

(b) If a written offer of settlement is made by a creditor but rejected by the debtor, a debt settlement services provider may charge a settlement fee equal to ten percent of the potential savings. The potential savings shall be calculated as the difference between the aggregate debt that is stated in the debt settlement services agreement at the time of its execution and written settlement offer from the creditor, provided that only savings resulting from proposed concessions actually negotiated by the debt settlement services provider may be counted.

(c) No other fees may be charged.

Subd. 4. **Collection of fees.** No debt settlement services provider may claim, demand, charge, collect, or receive any compensation until after the debt settlement service provider has fully performed each and every service the provider has contracted to perform or represented would be performed or as otherwise provided in this section.

Subd. 5. **Withdrawal of creditor.** Whenever a creditor withdraws from a debt settlement services plan, the debt settlement services provider must promptly notify the debtor of the withdrawal, identify the creditor, and inform the debtor of the right to cancel the debt settlement services agreement. In no case may this notice be provided more than 15 days after the debt settlement services provider learns of the creditor's decision to withdraw from a plan.

Subd. 6. **Timely notification of settlement.** A debt settlement services provider must notify the debtor within 24 hours of settlement of a debt with a creditor.

Sec. 26. **[332B.10] PROHIBITIONS.**

No debt settlement services provider shall:

(1) engage in any activity, act, or omission prohibited under section 332A.14;

(2) promise, guarantee, or directly or indirectly imply, infer, or in any manner represent that any debt will be settled prior to the presentation to the debtor of an offer by the creditors participating in the debt settlement plan to settle;

(3) misrepresent the timing of negotiations with creditors;

(4) imply, infer, or in any manner represent that:

(i) fees, interest, and other charges will not continue to accrue prior to the time debts are settled;

(ii) wages or bank accounts are not subject to garnishment;

(iii) creditors will not continue to contact the debtor;

(iv) the debtor is not subject to legal action; and

(v) the debtor will not be subject to tax consequences for the portion of any debts forgiven;

(5) execute a power of attorney or any other agreement, oral or written, express or implied, that extinguishes or limits the debtor's right at any time to contract or communicate with any creditor or the creditor's right at any time to communicate with the debtor;

(6) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(7) state, imply, infer, or, in any other manner, indicate that entering into a debt settlement services agreement or settling debts will either have no effect on, or improve, the debtor's credit, credit rating, and credit score;

(8) challenge a debt without the written consent of the debtor;

(9) make any false or misleading claim regarding a creditor's right to collect a debt;

(10) falsely represent that the debt settlement services provider can negotiate better settlement terms with a creditor than the debtor alone can negotiate;

(11) provide or offer to provide legal advice or legal services unless the person providing or offering to provide legal advice is licensed to practice law in the state;

(12) misrepresent that it is authorized or competent to furnish legal advice or perform legal services; and

(13) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification from the creditor that the payment is in full settlement of the debt.

Sec. 27. **[332B.11] ADVERTISEMENT OF DEBT SETTLEMENT SERVICES PLAN.**

No debt settlement services provider may engage in any activity proscribed by section 332A.16, or represent, claim, imply, or infer that secured debts may be settled.

Sec. 28. **[332B.12] DEBT SETTLEMENT SERVICES AGREEMENT RESCISSION.**

Any debtor has the right to rescind any debt settlement services agreement with a debt settlement services provider that commits a material violation of this chapter. On rescission, all fees paid to the debt settlement services provider or any other person other than creditors of the debtor must be returned to the debtor entering into the debt settlement services agreement within ten days of rescission of the debt settlement services agreement.

Sec. 29. **[332B.13] ENFORCEMENT; REMEDIES.**

Subdivision 1. **Violation as deceptive practice.** A violation of any of the provisions of this chapter is considered an unfair or deceptive trade practice under section 8.31, subdivision 1. A private right of action under section 8.31 by an aggrieved debtor is in the public interest.

Subd. 2. **Private right of action.** (a) A debt settlement provider who fails to comply with any of the provisions of this chapter is liable under this section in an individual action for the sum of:



(1) actual, incidental, and consequential damages sustained by the debtor as a result of the failure; and

(2) statutory damages of up to \$5,000.

(b) A debt settlement provider who fails to comply with any of the provisions of this chapter is liable to the named plaintiffs under this section in a class action for the amount that each named plaintiff could recover under paragraph (a), clause (1), and to the other class members for such amount as the court may allow.

(c) In determining the amount of statutory damages, the court shall consider, among other relevant factors:

(1) the frequency, nature, and persistence of noncompliance;

(2) the extent to which the noncompliance was intentional; and

(3) in the case of a class action, the number of debtors adversely affected.

(d) A plaintiff or class successful in a legal or equitable action under this section is entitled to the costs of the action, plus reasonable attorney fees.

**Subd. 3. Injunctive relief.** A debtor may sue a debt settlement services provider for temporary or permanent injunctive or other appropriate equitable relief to prevent violations of any provision of this chapter. A court must grant injunctive relief on a showing that the debt settlement services provider has violated any provision of this chapter, or in the case of a temporary injunction, on a showing that the debtor is likely to prevail on allegations that the debt settlement services provider violated any provision of this chapter.

**Subd. 4. Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

**Subd. 5. Public enforcement.** The attorney general shall enforce this chapter under section 8.31.

## **Sec. 30. [332B.14] INVESTIGATIONS.**

At any reasonable time, the commissioner may examine the books and records of every registrant and of any person engaged in the business of providing debt settlement services. The commissioner, once during any calendar year, may require the submission of an audit prepared by a certified public accountant of the books and records of each registrant. If the registrant has, within one year previous to the commissioner's demand, had an audit prepared for some other purpose, this audit may be submitted to satisfy the requirement of this section. The commissioner may investigate any complaint concerning

- 26.1 violations of this chapter and may require the attendance and sworn testimony of witnesses
- 26.2 and the production of documents.